

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

UNIVERSAL LIFE CHURCH
MONASTERY STOREHOUSE, a
Washington non-profit corporation,
Plaintiff,

v.

MAURICE KING, LEWIS KING,
GLEN YOSHIOKA, DYLAN WALL,
SARA WHITE, and AMERICAN
MARRIAGE MINISTRIES, a Washington
non-profit corporation,

Defendants

AMERICAN MARRIAGE MINISTRIES, a
Washington non-profit corporation,
Counter-Claimant/
Third-Party Plaintiff,

v.

UNIVERSAL LIFE CHURCH
MONASTERY STOREHOUSE, a
Washington non-profit corporation; and
UNIVERSAL LIFE CHURCH
MONASTERY STOREHOUSE, INC., a
Washington non-profit corporation,
Counter-Defendants/
Third-Party Defendants.

Case No. 2:19-CV-00301-RAJ

**AMERICAN MARRIAGE MINISTRIES'
MOTION FOR EXTENSION OF TIME**

The Honorable Richard A. Jones

**NOTING DATE: March 12, 2021
NO ORAL ARGUMENT REQUESTED**

**AMERICAN MARRIAGE MINISTRIES' MOTION FOR
EXTENSION OF TIME - 1
Case No. 2:19-CV-00301-RSL**

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I. MOTION

Defendant and Counter-Claimant American Marriage Ministries (“AMM”) respectfully requests that the Court extend the current fact discovery deadline of March 1, 2021, to April 1, 2021. This brief extension will allow AMM to complete motion practice in the Northern District of California to enforce its subpoenas for deposition and production of documents served upon Google. Dkt. 191.¹

II. STATEMENT OF FACTS

1. Factual Background

Plaintiff Universal Life Church Monastery Storehouse (“ULC”) and AMM are competitors, both providing online ordination services generating sales revenue through their respective websites. Dkt. 27. ULC alleges that AMM made false, defamatory, or misleading statements about ULC in violation of the Lanham Act and the Washington Consumer Protection Act (“CPA”). Id. ULC also claims defamation *per se*. Id. AMM has filed counterclaims arising from ULC’s misleading and unauthorized use of AMM’s trademark. Dkt. 28. Both parties seek injunctive relief and monetary damages.

2. Relevant Procedural History

On September 10, 2020, AMM sought an extension of the discovery deadline to allow the third parties that AMM subpoenaed — including Google and Microsoft — to complete their production of documents and to allow time for AMM to take their depositions. Dkt. 163. Prior to the Court issuing its ruling on this motion, and in the hope that the Court would extend the deadline, AMM’s counsel reached out to Google to streamline the process for scheduling a deposition. Dkt. 180-1. On December 3, 2020, Google produced documents pertaining to ULC’s Google AdWords account. Dkt 180-2. Google did not produce any documents for ULC’s Google Analytics account(s). Dkt. 180.

¹ AMM is not requesting an extension of the deadline to file motions for summary judgment. Dkt. 191.

1 On December 14, 2020, the Court granted in part AMM's motion. Dkt. 171. The Court
 2 extended the fact discovery deadline to January 28, 2021, to permit AMM to take the depositions
 3 of Google and Microsoft and to allow Google to complete their production of documents.
 4 Dkt. 171.²

5 Following the Court's December 14, 2020, Order, AMM's counsel again reached out to
 6 counsel for Google to schedule a deposition. Dkt. 180-3. Counsel for Google responded that its
 7 certificate of authenticity and declaration of its custodian of records eliminated the need for a
 8 deposition. Dkt. 180-4. On December 22, 2020, counsel for AMM met and conferred with
 9 Google's counsel regarding AMM's request for deposition and the Google Analytics records
 10 Google had not provided. Dkt. 180. Google asserted that a deposition would be unduly
 11 burdensome and again offered to provide a declaration in addition to its certificate of
 12 authentication for the Google AdWords documents and in lieu of a deposition. *Id.* Google also
 13 contended that it could not produce ULC's Google Analytics records without violating the
 14 Stored Communications Act, 18 U.S.C. § 2702 *et seq.* On December 30, 2020, counsel for
 15 AMM reiterated its position that a deposition was necessary and that AMM intended to file a
 16 motion to compel. Dkt. 180-5. On January 8, 2021, counsel for Google informed counsel for
 17 AMM that it had retained outside counsel to represent Google regarding AMM's Motion to
 18 Compel. Dkt. 180-6. On January 7, 2021, AMM filed a Motion to Compel Deposition
 19 Testimony and Production of Documents from Google. Dkt. 172. On January 12, 2021,
 20 Google's outside counsel served objections to AMM's Motion to Compel. Dkt. 180-7. On
 21 January 14, 2021, AMM's counsel informed Google's counsel that it intended to withdraw its
 22 Motion to Compel and re-file it in the Northern District of California and then request that court
 23 transfer AMM's Motion to Compel to the Western District of Washington. Dkts. 176, 180-8.

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² Microsoft has submitted to a deposition. This motion is solely for the purpose of pursuing a deposition of
 and document production from Google.

1 AMM retained local counsel in California to assist with filing its Motion to Transfer under
 2 Federal Rule of Civil Procedure 45(f) and its Motion to Compel. Roberts Decl., Ex. 9. On
 3 January 27, 2021, AMM conferred with counsel for Google on its Motion to Transfer as required
 4 by local rule. Roberts Decl., Ex. 10. Counsel for Google requested additional time to follow
 5 up with Google regarding its position on AMM's Motions. AMM had a follow-up conferral
 6 with counsel for Google on February 12, 2021. *Id.* AMM intends to file its Motion to Transfer
 7 concurrently with its Motion to Compel with the Northern District of California prior to the
 8 current discovery deadline. AMM is seeking a brief extension of time to complete the motion
 9 practice in California and Washington and to take Google's deposition.

10 Prior to filing this motion, on February 26, 2021, AMM met and conferred with counsel
 11 for ULC regarding ULC's position on this motion. Roberts Decl., Ex. 11. ULC was unable to
 12 take a position on this motion during the conferral because ULC's representatives were
 13 unavailable or traveling. *Id.*

14 III. ARGUMENT

15 1. Legal Standards

16 Pursuant to Federal Rule of Civil Procedure 16(b), a case schedule "may be extended
 17 where good cause exists and the delay is not caused by the carelessness or less than reasonably
 18 diligent action by moving counsel." *Price v. Equilon Enters., LLC*, No. 2:17-CV-01337-MJP,
 19 2018 WL 6816425, at * 2 (W.D. Wash. May 24, 2018). Fed. R. Civ. P. 6(b) also permits the
 20 Court for "good cause" to extend the time for an act that must be done within a specified time.
 21 The Court has discretion to extend a case scheduling deadline. *In re Veritas Software Corp.*
 22 *Sec. Litig.*, 496 F.3d 962, 974 (9th Cir. 2007). A motion for extension of time filed before a
 23 deadline has passed should "normally . . . be granted in the absence of bad faith on the part of
 24 the party seeking relief or prejudice to the adverse party." *Ahanchian v. Xenon Pictures, Inc.*,
 25 624 F.3d 1253, 1259 (9th Cir. 2010).

1 **A. AMM has Diligently Pursued its Subpoenas for Deposition and Production of**
 2 **Documents from Google**

3 Good cause exists to extend the current fact discovery deadline by an additional 30 days
 4 from the date of the Court's Order on this Motion. AMM has diligently pursued its subpoenas
 5 for deposition testimony and production of ULC's Google Analytics records. While AMM's
 6 Motion for Clarification and Extension of Time (Dkt. 163) was pending, AMM reached out to
 7 Google to reiterate its intent to take Google's deposition so that Google could identify the
 8 appropriate witness and to streamline scheduling the deposition. Dkt. 180-1. AMM and Google
 9 did not set a deposition date at that time because the Court had not yet extended the discovery
 10 deadline. Counsel for AMM followed-up with Google to schedule a mutually agreeable date
 11 and time for the deposition as soon as the Court issued its Order granting an extension of the
 12 discovery deadline. Dkt. 180-3.

13 Google responded that it wanted to meet and confer with its in-house counsel regarding
 14 AMM's Subpoenas for deposition and production of the Google Analytics records for ULC.
 15 Dkt. 180-4. On December 22, 2020, counsel for AMM met and conferred with counsel for
 16 Google regarding AMM's Subpoenas. Dkt. 180-5. During this meet and confer, Google
 17 objected that a deposition would be unduly burdensome and expensive. Dkt. 180-6. Google
 18 stated that it had already provided a certificate of authentication for the documents it had
 19 produced regarding ULC's Google AdWords account and offered to provide a declaration in
 20 lieu of deposition. *Id.* Counsel for Google also repeated its objection to producing any
 21 documents regarding ULC's Google Analytics account, asserting without analysis that
 22 producing these documents would violate the Stored Communications Act 18 U.S.C. § 2702.
 23 *Id.*

24 On December 30, 2020, AMM followed up with counsel for Google reiterating its
 25 position that a declaration in lieu of deposition would not suffice and that it intended to file a

1 motion to compel if Google would not agree to a deposition and to producing the requested
 2 Google Analytics records. Dkt. 180-5. On January 8, 2021, counsel for Google informed
 3 AMM's counsel that it had retained outside counsel for purposes of representing Google
 4 regarding AMM's Motion to Compel. Dkt. 180-6. AMM filed its Motion to Compel Deposition
 5 Testimony and Production of Documents from Google on January 7, 2021. Dkt. 172. On
 6 January 12, 2021, Google's new counsel sent AMM objections to AMM's Motion to Compel,
 7 stated that it would not submit to this Court's jurisdiction, and demanded that AMM's Motion
 8 be withdrawn and refiled with the Northern District of California. Dkt. 180-7. AMM withdrew
 9 its Motion to Compel in this Court on January 14, 2021. Dkt. 176. AMM will refile its Motion
 10 to Compel in the Northern District of California and seeks to have the Motion transferred to this
 11 Court as soon as possible. *Id.*

12 AMM has diligently pursued its Subpoenas for deposition testimony and production of
 13 ULC's Google Analytics records. However, Google has refused to submit to a deposition and
 14 produce the analytics documents, necessitating motion practice that cannot be completed by
 15 March 1, 2021. AMM retained local counsel in California to assist with filing a Motion to
 16 Transfer pursuant to Federal Rule of Civil Procedure 45(f) and its Motion to Compel Production
 17 of Documents and Deposition Testimony from Google. Roberts Decl., Ex. 9. AMM's has
 18 retained local counsel in California and anticipates that its Motions will be filed by the fact
 19 discovery deadline. AMM seeks a brief extension of time of the current fact discovery deadline
 20 to complete its motion practice in California and to take Google's deposition.

21 AMM has not made this Motion in bad faith and granting AMM an additional 30 days
 22 will not prejudice ULC. AMM conferred with counsel for ULC regarding this Motion, but ULC
 23 was not able to take a position during the conferral. Roberts Decl., Ex. 11. Extending the current

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1 deadlines for fact discovery will allow AMM to secure documents and deposition testimony that
2 this Court has already identified as important for the claims and counterclaims in this case.
3 Dkts. 127, 171.

4 IV. CONCLUSION

5 For the foregoing reasons, AMM requests that the Court grant its Motion for Extension
6 of Time by extending the current fact discovery deadline to April 1, 2021, to allow AMM to
7 complete its motions practice to compel deposition testimony and production of documents from
8 Google.

9 DATED this 26th day of February 2021.

10 BETTS, PATTERSON & MINES, P.S.

11
12 By: /s/ Sheeba Roberts

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23 Glen Yoshioka, Dylan Wall, Sarah White, and
24 American Marriage Ministries
25

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2021, the foregoing **AMERICAN MARRIAGE MINISTRIES' MOTION FOR EXTENSION OF TIME** was electronically filed with U.S. District Court for the Western District of Washington through the CM/ECF eFiling system.

I further certify that on February 26, 2021, I served a copy of the foregoing on:

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_____ by mailing to each of the foregoing a copy thereof, placed in a sealed envelope addressed as listed above and deposited in the United States mail at Portland, Oregon, and that postage thereon was fully prepaid.

_____ by facsimile transmission to the number shown above.

 X by additional e-service through the E-Filing system, if party was registered.

 X by courtesy email to the email addresses shown above.

/s/ Carrie J. Cook

Carrie J. Cook, CP

Legal Assistant/Certified Paralegal